

# COMMITTEE REPORT

---

## MR. PRESIDENT:

The Senate Committee on Finance, to which was referred House Bill No. 1815, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1           Page 15, between lines 23 and 24, begin a new paragraph and insert:  
2           "SECTION 30. IC 6-2.5-6-9 IS AMENDED TO READ AS  
3           FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 9. (a) In  
4           determining the amount of state gross retail and use taxes which he  
5           must remit under section 7 of this chapter, a retail merchant shall,  
6           **subject to subsection (c)**, deduct from his gross retail income from  
7           retail transactions made during a particular reporting period, an amount  
8           equal to his receivables which:  
9           (1) resulted from retail transactions in which the retail merchant  
10           did not collect the state gross retail or use tax from the purchaser;  
11           (2) resulted from retail transactions on which the retail merchant  
12           has previously paid the state gross retail or use tax liability to the  
13           department; and  
14           (3) were written off as an uncollectible debt for federal tax  
15           purposes **under Section 166 of the Internal Revenue Code**  
16           during the particular reporting period.  
17           (b) If a retail merchant deducts a receivable under subsection (a)  
18           and subsequently collects **all or part of** that receivable, then the retail  
19           merchant shall include the amount collected as part of his gross retail  
20           income from retail transactions for the particular reporting period in  
21           which he makes the collection.

- 1           (c) The following provisions apply to a deduction for a  
2       receivable treated as uncollectible debt under subsection (a):
- 3           (1) The deduction does not include interest.
- 4           (2) The amount of the deduction shall be determined in the  
5       manner provided by Section 166 of the Internal Revenue  
6       Code for bad debts but shall be adjusted to exclude:
- 7           (A) financing charges or interest;
- 8           (B) sales or use taxes charged on the purchase price;
- 9           (C) uncollectible amounts on property that remain in the  
10       possession of the seller until the full purchase price is paid;
- 11          (D) expenses incurred in attempting to collect any debt;
- 12          and
- 13          (E) repossessed property.
- 14       (3) The deduction shall be claimed on the return for the  
15       period during which the receivable is written off as  
16       uncollectible in the claimant's books and records and is  
17       eligible to be deducted for federal income tax purposes. For  
18       purposes of this subdivision, a claimant who is not required to  
19       file federal income tax returns may deduct an uncollectible  
20       receivable on a return filed for the period in which the  
21       receivable is written off as uncollectible in the claimant's  
22       books and records and would be eligible for a bad debt  
23       deduction for federal income tax purposes if the claimant  
24       were required to file a federal income tax return.
- 25       (4) If the amount of uncollectible receivables claimed as a  
26       deduction by a retail merchant for a particular reporting  
27       period exceeds the amount of the retail merchant's taxable  
28       sales for that reporting period, the retail merchant may file a  
29       refund claim under IC 6-8.1-9. However, the deadline for  
30       refund claim shall be measured from the due date of the  
31       return for the reporting period on which the deduction for the  
32       uncollectible receivables could first be claimed.
- 33       (5) If a retail merchant's filing responsibilities have been  
34       assumed by a certified service provider (as defined in  
35       IC 6-2.5-11-2), the certified service provider may claim, on  
36       behalf of the retail merchant, any deduction or refund for  
37       uncollectible receivables provided by this section. The  
38       certified service provider must credit or refund the full  
39       amount of any deduction or refund received to the retail  
40       merchant.
- 41       (6) For purposes of reporting a payment received on a  
42       previously claimed uncollectible receivable, any payments

1           made on a debt or account shall be applied first  
2           proportionally to the taxable price of the property and the  
3           state gross retail tax or use tax thereon, and secondly to  
4           interest, service charges, and any other charges.

5           (7) A retail merchant claiming a deduction for an  
6           uncollectible receivable may allocate that receivable among  
7           the states that are members of the streamlined sales and use  
8           tax agreement if the books and records of the retail merchant  
9           support that allocation."

10          Page 15, line 24, delete "IC 6-8.1-16" and insert "IC 6-2.5-12".

11          Page 15, line 27, delete "16." and insert "12."

12          Page 19, between lines 29 and 30, begin a new paragraph and insert:

13          "SECTION 32. IC 6-2.5-13 IS ADDED TO THE INDIANA CODE  
14          AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
15          JANUARY 1, 2004]:

16                 **Chapter 13. General Sourcing Rules**

17                 **Sec. 1. (a) As used in this section, the terms "receive" and**  
18                 **"receipt" mean:**

19                         (1) taking possession of tangible personal property;

20                         (2) making first use of services; or

21                         (3) taking possession or making first use of digital goods;

22                 **whichever comes first. The terms "receive" and "receipt" do not**  
23                 **include possession by a shipping company on behalf of the**  
24                 **purchaser.**

25                 **(b) This section:**

26                         (1) applies regardless of the characterization of a product as  
27                         tangible personal property, a digital good, or a service;

28                         (2) applies only to the determination of a seller's obligation to  
29                         pay or collect and remit a sales or use tax with respect to the  
30                         seller's retail sale of a product; and

31                         (3) does not affect the obligation of a purchaser or lessee to  
32                         remit tax on the use of the product to the taxing jurisdictions  
33                         of that use.

34                 **(c) This section does not apply to sales or use taxes levied on the**  
35                 **following:**

36                         (1) The retail sale or transfer of watercraft, modular homes,  
37                         manufactured homes, or mobile homes. These items must be  
38                         sourced according to the requirements of this article.

39                         (2) The retail sale, excluding lease or rental, of motor vehicles,  
40                         trailers, semitrailers, or aircraft that do not qualify as  
41                         transportation equipment, as defined in subsection (g). The  
42                         retail sale of these items shall be sourced according to the

1 requirements of this article, and the lease or rental of these  
2 items must be sourced according to subsection (f).

3 (3) Telecommunications services, as set forth in IC 6-2.5-12,  
4 shall be sourced in accordance with IC 6-2.5-12.

5 (d) The retail sale, excluding lease or rental, of a product shall  
6 be sourced as follows:

7 (1) When the product is received by the purchaser at a  
8 business location of the seller, the sale is sourced to that  
9 business location.

10 (2) When the product is not received by the purchaser at a  
11 business location of the seller, the sale is sourced to the  
12 location where receipt by the purchaser (or the purchaser's  
13 donee, designated as such by the purchaser) occurs, including  
14 the location indicated by instructions for delivery to the  
15 purchaser (or donee), known to the seller.

16 (3) When subdivisions (1) and (2) do not apply, the sale is  
17 sourced to the location indicated by an address for the  
18 purchaser that is available from the business records of the  
19 seller that are maintained in the ordinary course of the seller's  
20 business when use of this address does not constitute bad  
21 faith.

22 (4) When subdivisions (1), (2), and (3) do not apply, the sale is  
23 sourced to the location indicated by an address for the  
24 purchaser obtained during the consummation of the sale,  
25 including the address of a purchaser's payment instrument, if  
26 no other address is available, when use of this address does  
27 not constitute bad faith.

28 (5) When none of the previous rules of subdivision (1), (2), (3),  
29 or (4) apply, including the circumstance in which the seller is  
30 without sufficient information to apply the previous rules,  
31 then the location will be determined by the address from  
32 which tangible personal property was shipped, from which  
33 the digital good or the computer software delivered  
34 electronically was first available for transmission by the  
35 seller, or from which the service was provided (disregarding  
36 for these purposes any location that merely provided the  
37 digital transfer of the product sold).

38 (e) The lease or rental of tangible personal property, other than  
39 property identified in subsection (f) or (g), shall be sourced as  
40 follows:

41 (1) For a lease or rental that requires recurring periodic  
42 payments, the first periodic payment is sourced the same as a

1 retail sale in accordance with the provisions of subsection (d).  
2 Periodic payments made subsequent to the first payment are  
3 sourced to the primary property location for each period  
4 covered by the payment. The primary property location shall  
5 be as indicated by an address for the property provided by the  
6 lessee that is available to the lessor from its records  
7 maintained in the ordinary course of business, when use of  
8 this address does not constitute bad faith. The property  
9 location shall not be altered by intermittent use at different  
10 locations, such as use of business property that accompanies  
11 employees on business trips and service calls.

12 (2) For a lease or rental that does not require recurring  
13 periodic payments, the payment is sourced the same as a retail  
14 sale in accordance with the provisions of subsection (d).

15 This subsection does not affect the imposition or computation of  
16 sales or use tax on leases or rentals based on a lump sum or an  
17 accelerated basis, or on the acquisition of property for lease.

18 (f) The lease or rental of motor vehicles, trailers, semitrailers,  
19 or aircraft that do not qualify as transportation equipment, as  
20 defined in subsection (g), shall be sourced as follows:

21 (1) For a lease or rental that requires recurring periodic  
22 payments, each periodic payment is sourced to the primary  
23 property location. The primary property location shall be as  
24 indicated by an address for the property provided by the  
25 lessee that is available to the lessor from its records  
26 maintained in the ordinary course of business, when use of  
27 this address does not constitute bad faith. This location shall  
28 not be altered by intermittent use at different locations.

29 (2) For a lease or rental that does not require recurring  
30 periodic payments, the payment is sourced the same as a retail  
31 sale in accordance with the provisions of subsection (d).

32 This subsection does not affect the imposition or computation of  
33 sales or use tax on leases or rentals based on a lump sum or  
34 accelerated basis, or on the acquisition of property for lease.

35 (g) The retail sale, including lease or rental, of transportation  
36 equipment shall be sourced the same as a retail sale in accordance  
37 with the provisions of subsection (d), notwithstanding the exclusion  
38 of lease or rental in subsection (d). As used in this subsection,  
39 "transportation equipment" means any of the following:

40 (1) Locomotives and railcars that are used for the carriage of  
41 persons or property in interstate commerce.

42 (2) Trucks and truck-tractors with a gross vehicle weight

1 rating (GVWR) of ten thousand one (10,001) pounds or  
2 greater, trailers, semitrailers, or passenger buses that are:

3 (A) registered through the International Registration Plan;  
4 and

5 (B) operated under authority of a carrier authorized and  
6 certificated by the U.S. Department of Transportation or  
7 another federal authority to engage in the carriage of  
8 persons or property in interstate commerce.

9 (3) Aircraft that are operated by air carriers authorized and  
10 certificated by the U.S. Department of Transportation or  
11 another federal or a foreign authority to engage in the  
12 carriage of persons or property in interstate or foreign  
13 commerce.

14 (4) Containers designed for use on and component parts  
15 attached or secured on the items set forth in subdivisions (1)  
16 through (3).

17 **Sec. 2. (a) Notwithstanding section 1 of this chapter, a business**  
18 **purchaser that:**

19 (1) is not a holder of a direct pay permit; and

20 (2) knows at the time of its purchase of a digital good,  
21 computer software delivered electronically, or a service that  
22 the digital good, computer software delivered electronically,  
23 or service will be concurrently available for use in more than  
24 one (1) jurisdiction;

25 shall deliver to the seller in conjunction with its purchase a form  
26 disclosing this fact ("multiple points of use" or "MPU" exemption  
27 form).

28 (b) Upon receipt of the MPU exemption form, the seller is  
29 relieved of all obligation to collect, pay, or remit the applicable tax  
30 and the purchaser shall be obligated to collect, pay, or remit the  
31 applicable tax on a direct pay basis.

32 (c) A purchaser delivering the MPU exemption form may use  
33 any reasonable, but consistent and uniform, method of  
34 apportionment that is supported by the purchaser's business  
35 records as they exist at the time of the consummation of the sale.

36 (d) The MPU exemption form remains in effect for all future  
37 sales by the seller to the purchaser (except as to the subsequent  
38 sale's specific apportionment that is governed by the principle of  
39 subsection (c) and the facts existing at the time of the sale) until it  
40 is revoked in writing.

41 (e) A holder of a direct pay permit shall not be required to  
42 deliver a MPU exemption form to the seller. A direct pay permit

1 holder shall follow the provisions of subsection (c) in apportioning  
2 the tax due on a digital good or a service that will be concurrently  
3 available for use in more than one (1) jurisdiction.

4 **Sec. 3. (a) Notwithstanding section 1 of this chapter, a purchaser**  
5 **of direct mail that is not a holder of a direct pay permit shall**  
6 **provide to the seller in conjunction with the purchase either a**  
7 **direct mail form or information to show the jurisdictions to which**  
8 **the direct mail is delivered to recipients.**

9 (b) Upon receipt of the direct mail form, the seller is relieved of  
10 all obligations to collect, pay, or remit the applicable tax and the  
11 purchaser is obligated to pay or remit the applicable tax on a direct  
12 pay basis. A direct mail form remains in effect for all future sales  
13 of direct mail by the seller to the purchaser until it is revoked in  
14 writing.

15 (c) Upon receipt of information from the purchaser showing the  
16 jurisdictions to which the direct mail is delivered to recipients, the  
17 seller shall collect the tax according to the delivery information  
18 provided by the purchaser. In the absence of bad faith, the seller is  
19 relieved of any further obligation to collect tax on any transaction  
20 where the seller has collected tax under the delivery information  
21 provided by the purchaser.

22 (d) If the purchaser of direct mail does not have a direct pay  
23 permit and does not provide the seller with either a direct mail  
24 form or delivery information, as required by subsection (a), the  
25 seller shall collect the tax according to section 1(d)(5) of this  
26 chapter. Nothing in this subsection limits a purchaser's obligation  
27 for sales or use tax to any state to which the direct mail is  
28 delivered.

29 (e) If a purchaser of direct mail provides the seller with  
30 documentation of direct pay authority, the purchaser shall not be  
31 required to provide a direct mail form or delivery information to  
32 the seller."

33 Renumber all SECTIONS consecutively.

(Reference is to HB 1815 as printed February 19, 2003.)

**and when so amended that said bill do pass .**

Committee Vote: Yeas 13, Nays 0.

---

**Senator Borst, Chairperson**